

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JACK SEXTON and RONALD
KETTELLS,

Defendants.

Case No. CR11-383RSL

ORDER DENYING MOTIONS
TO SUPPRESS EVIDENCE

This matter comes before the Court on Defendant Ronald Kettells' "Motion for Franks Hearing" (Dkt. # 60), in which Defendant Jack Sexton joins (Dkt. # 63), and Sexton's "Motion to Suppress Evidence Due to Fourth Amendment Violations," (Dkt. # 62), in which Kettells joins (Dkt. # 67). Defendants seek to suppress evidence obtained during two searches following their arrest because the search warrant applications lacked sufficient detail and omitted relevant facts, the searches exceeded the scope of the two warrants, and Defendants did not consent to the searches.

Having reviewed the memoranda, declarations, and exhibits submitted by the parties, and having considered the evidence presented during the Franks hearing, the Court finds as follows:

I. BACKGROUND FACTS

On October 25, 2011, after Defendants were arrested, Detective Cynthia Sampson of the King County Sheriff's Office ("KCSO") applied for a search warrant telephonically. Dkt. # 62-6 at 1. To support the warrant application, Detective Sampson

1 prepared and signed an affidavit describing the investigation of a series of bank
2 robberies in the greater Seattle, Washington area. Dkt. # 62-5. Although Detective
3 Sampson was involved in the investigation, she relied on information that KCSO
4 Detective Christina Bartlett and Seattle Police Department (“SPD”) Detective Len
5 Carver, the co-leaders of the investigation, provided at the scene of the arrest. The
6 affidavit describes five bank robberies, witnesses’ descriptions of the suspects, and the
7 eyewitness identification of the car used in the most recent robbery. Id. at 3-4. The
8 affidavit also describes the detectives’ interview of the car’s registered owner, Terrance
9 Stone, and his statements linking the Defendants to the car and the robberies. Id. at 4-5.
10 Finally, the affidavit describes the police surveillance of the property in which
11 Defendants were suspected to be staying as well as the subsequent arrest of the
12 Defendants in the car that had been earlier identified just outside of the locked gate
13 surrounding the property. Id. at 5.

14 King County Superior Court Judge Laura Gene Middaugh granted Detective
15 Sampson’s application and issued a search warrant authorizing the search of the
16 property where Defendants were staying, including the trailers in which Defendants
17 were living and other buildings on the property, and a 1991 Ford Tempo, the car
18 Defendants were driving at the time of their arrest. Dkt. # 62-7 at 2-3. Although the
19 detectives had previously obtained oral consent from Defendants and written consent
20 from Sexton to conduct an unlimited search of the property, trailers, vehicles, and the
21 Ford Tempo, the detectives elected to obtain a search warrant out of an abundance of
22 caution.

23 Detectives executed the search on October 25, 2011 in the evening hours. During
24 their search, the detectives seized a black baseball cap, a handgun box, a black
25 messenger style bag, identification cards, a black wig, and gloves. See Dkt. # 62-3.
26 Toward the end of the search, FBI Special Agent Carolyn Woodbury noticed a trail

1 leading to an abandoned Chevy Cheyenne truck on the far side of the lot. During her
2 search of the truck, she retrieved an Easton baseball bag containing a Hilary Clinton
3 mask, an old man mask, a black rain coat with shotgun shells, an empty gun holster, two
4 rifle magazines, two rifles, a pistol-grip shotgun, and a Hi-point pistol in a holster. Id.

5 Two days later, Detective Sampson submitted a second warrant application based
6 on her telephonic application and an addendum to her original affidavit to request
7 authorization to search the same property in the daylight, a car recently driven by Sexton
8 and three cell phones found in the Ford Tempo. Dkt. # 62-5. Judge Middaugh issued
9 the second search warrant and detectives conducted the follow up search on October 27,
10 2011. Id.

11 Defendants requested an evidentiary hearing under Franks v. Delaware, 438 U.S.
12 154 (1978), based on their contention that the warrant applications were defective
13 because Detective Sampson's supporting affidavit lacked material information and had
14 this material been included, the applications would have lacked probable cause. Dkt. #
15 60 at 8-12. The Court granted Defendants' request and held an evidentiary hearing on
16 February 25-26, 2013.

16 II. ANALYSIS

17 A. Franks Hearing

18 "The threshold determination in a Franks hearing is whether erroneous statements
19 or omissions in an affidavit supporting a search warrant were made knowingly and
20 intentionally, or with reckless disregard for the truth." United States v. Senchenko, 133
21 F.3d 1153, 1158 (9th Cir. 1998) (quotation marks omitted). If such a finding is made,
22 the court must determine whether the affidavit, once supplemented by the omissions,
23 would provide a substantial basis for finding that probable cause existed. Id.; United
24 States v. Stanert, 762 F.2d 775, 782 (9th Cir. 1985) (applying Franks standard to
25 omissions).

1 The Court finds that Detective Sampson did not knowingly and intentionally, or
2 with reckless disregard for the truth, omit material information in her affidavit. During
3 the Franks hearing, Detective Sampson testified credibly that she prepared the affidavit
4 based on in part on her limited personal knowledge of the investigation. Detective
5 Sampson was not aware of the details of the investigation, but she relied heavily on
6 information from Detective Carver and Detective Bartlett, both of whom testified that
7 they did not intentionally or recklessly omit any information when they helped
8 Detective Carver complete the affidavit. Although the affidavit may have omitted
9 important facts that should have been included, the Court is satisfied that the detectives
10 did not try to mislead Judge Middaugh. Defendants have not presented any evidence to
11 suggest otherwise. Thus, Defendants have failed to meet their burden under Franks.¹

11 **B. Consent**

12 Even if the applications for the search warrants were defective, the evidence
13 seized during the searches would be admissible because both Defendants consented to
14 an unlimited search of the property. The testimony at the hearing established that after
15 Defendants were arrested and read their Miranda rights, they discussed whether to
16 consent to the search and agreed to allow the detectives to search the property.
17 Furthermore, Defendant Sexton signed a consent form, acknowledging that he
18 consented to an unlimited search of the property, including travel trailers and vehicles
19 on the property, and the 1991 Ford Tempo. Dkt. # 62-2. Despite this authorization,
20 Defendants contend that Sexton's consent was involuntary. Dkt. # 62 at 8-9.

21 Whether a person's consent to search was voluntary "is a question of fact to be
22 determined from the totality of circumstances." Schneckloth v. Bustamonte, 412 U.S.
23 218, 227 (1973). The Ninth Circuit considers the following five factors to determine

24 ¹Even if the omitted facts were included in the search warrant affidavit there still would
25 be overwhelming probable cause to justify the issuance of the search warrant.

1 whether consent was voluntarily given: “(1) whether the person was in custody; (2)
2 whether the officers had their guns drawn; (3) whether a Miranda warning had been
3 given; (4) whether the person was told that he had the right not to consent; and (5)
4 whether the person was told that a search warrant could be obtained.” United States v.
5 Reid, 226 F.3d 1020, 1026 (9th Cir. 2000).

6 As to the first factor, Sexton was arrested at the time he gave conditional consent.
7 As to the second factor, the testimony indicates that Detective Carver and Detective
8 Bartlett had firearms when they discussed consent with Sexton, but there is no evidence
9 that the weapons were drawn. The third and fourth factors favor a finding that Sexton’s
10 consent was voluntary because the detectives read him his Miranda rights more than
11 once and he was informed that had the right not to consent. See Dkt. # 62-2. As for the
12 fifth factor, the detectives did not tell Sexton that they could obtain a search warrant.
13 Considering these five factors, the Court finds that Sexton’s consent was voluntary.
14 Sexton’s execution of a consent form further supports the Court’s conclusion that his
15 consent to search the premises was voluntary. United States v. Childs, 944 F.2d 491,
16 496 (9th Cir. 1991). Regardless of whether the warrant applications were defective, the
17 evidence seized during the search is admissible based on the Defendants’ consent.
18 United States v. Brown, 563 F.3d 410, 415 (9th Cir. 2009) (“[A warrantless] search
19 conducted pursuant to a valid consent is constitutionally permissible.”) (alteration in
20 original) (citation omitted).

21 **C. Search of Other Vehicles**

22 **1. Standing**

23 Defendants challenge the search of the Chevy Cheyenne truck located on the far
24 side of the property because it exceeded the scope of the search warrant issued on
25 October 25, 2011, and they did not consent to a search of the truck. Dkt. # 62 at 7-9.

26 Before Defendants may claim the protections of the Fourth Amendment, they
must demonstrate that they had an expectation of privacy in the property searched and

1 that their expectation was reasonable. United States v. Reyes-Bosque, 596 F.3d 1017,
2 1026 (9th Cir. 2010). To meet this standard, Defendants must show “a subjective
3 expectation of privacy in the area searched, and their expectation must be one that
4 society would recognize as objectively reasonable.” United States v. Sarkisian, 197
5 F.3d 966, 986 (9th Cir. 1999). Defendants bear the burden of “establishing that, under
6 the totality of circumstances, the search or seizure violated their legitimate expectation
7 of privacy.” United States v. Silva, 247 F.3d 1051, 1055 (9th Cir. 2001).

8 The Court finds that Sexton and Kettells lack Fourth Amendment standing to
9 challenge the search of the Chevy Cheyenne. First, a defendant’s expectation of privacy
10 in a car is very different from the traditional expectation of privacy in one’s home. See
11 Rakas v. Illinois, 439 U.S. 128, 148 (1978). Second, Defendants did not assert a
12 possessory interest in either the truck or the property found inside and seized.

13 Sarkisian, 197 F.3d at 987 (“though the failure to allege ownership of the items seized
14 by itself, could not bar standing to challenge the search, it is a factor to be considered.”).

15 Third, during the evidentiary hearing, Michael Dhillon, the property owner, testified
16 that when he rented a portion of the property and the trailers to Sexton, he expressly
17 prohibited Sexton from accessing or using any vehicles or tools on the property. He
18 gave Sexton permission to walk around the property, but not to touch or use any
19 equipment. Although it is true that the truck was physically located on property rented
20 by Defendants and Defendants had a key with which they could prohibit others from
21 entering the property, these facts alone are insufficient to establish a reasonable
22 expectation of privacy in the Chevy Cheyenne.

23 Under the totality of circumstances, Defendants have failed to show that they
24 possessed a legitimate expectation of privacy in the Chevy Cheyenne and thus,
25 Defendants lack standing to challenge the search and subsequent seizure of items found
26 in the truck.

2. Scope of Consent

1 Even if Defendants had standing to challenge the search of the truck, the Court
2 finds that the search was within the scope of Defendants' consent. After a detective
3 read Defendants their Miranda rights, the Defendants had an opportunity to discuss
4 whether or not they wanted to consent to a search of the property. During this
5 conversation they agreed to allow detectives to search the entire property. Neither
6 Defendant attempted to limit the search in any way and the consent form signed by
7 Sexton clearly indicates that he consented to an unlimited search, including
8 outbuildings, travel trailers and all vehicles. Dkt. # 62-2. He did not object when
9 Detective Bartlett reviewed the entire form with him before he signed it.

10 **3. Scope of Search Warrant**

11 Finally, the Court finds that the search of the Chevy Cheyenne was within the
12 scope of the search warrant. While Defendants are correct that the warrant incorrectly
13 states that the property to be searched is located in Mill Creek, Washington, rather than
14 in Lynnwood, Washington, this technical mistake is insufficient to suppress the
15 evidence seized during the search. Other factors present in this case indicate that there
16 "was virtually no chance that the executing officer would have any trouble locating and
17 identifying the premises to be searched, or that he would mistakenly search another
18 house." United States v. Turner, 770 F.2d 1508, 1511 (9th Cir. 1985). The property
19 had been under surveillance before the warrant was sought; Defendants arrived at the
20 property during the police surveillance; Defendants confirmed that they were living on
21 the property; and the property intended to be searched was that actually searched.
22 See id. (finding warrant description sufficiently particular even though it included the
23 wrong street number of the house intended to be searched).

24 The warrant issued by Judge Middaugh on October 25, 2011, authorized a search
25 of the entire Lynnwood property, and all travel trailers and outbuildings on the property.
26 Dkt. # 62-6; Dkt. # 62-7. While Agent Woodbury was searching the property, she came
across the Chevy Cheyenne. It was located on the far side of the property and had

1 become what appeared to be a more permanent structure, based on the surrounding
2 overgrown plants. See Dkt. # 74-9. Based on the warrant's express authorization of a
3 search of the property and the truck's appearance as an outbuilding, the Court concludes
4 that the warrant reasonably encompassed the Chevy Cheyenne.

5 **III. CONCLUSION**

6 For all of the foregoing reasons, the Court DENIES Defendants' motions to
7 suppress evidence obtained as a result of the October 25, 2011, and October 27, 2011,
8 searches (Dkt. # 60, 62).

9 DATED this 7th day of March, 2013.

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14 Robert S. Lasnik
15 United States District Judge
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